

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DENNIS WILLIAMS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>KOCH SERVICES, INC.</b>	)	Docket No. 196,562
Respondent	)	
AND	)	
	)	
<b>PLANET INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appeals from an Order entered by Administrative Law Judge Bruce E. Moore on June 10, 1999, denying claimant's request for post-award medical care.

**ISSUES**

Claimant stipulated to an Award on March 29, 1995, which provided for future medical treatment upon application and approval by the Director. On December 30, 1998, claimant filed an Application for Preliminary Hearing and at the hearing held June 4, 1999, presented evidence which claimant contends shows claimant needs additional medical care, specifically surgery recommended by Dr. Tejano. The ALJ found the surgery recommended is not reasonably necessary and denied claimant's request. Claimant appeals that finding.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the appeal should be treated as an appeal from a preliminary hearing. Since the appeal does not raise a jurisdictional issue, the Board does not have jurisdiction to consider the appeal.

In appeals from preliminary hearing orders, the Board has limited jurisdiction. The Board's jurisdiction is limited to review of allegations that the ALJ exceeded his/her jurisdiction. This includes review of the issues the legislature has, in K.S.A. 1998 Supp. 44-534a, labeled jurisdictional. That statute specifically identifies as jurisdictional issues: (1) whether claimant suffered accidental injury; (2) whether the injury arose out of and in the

course of employment; (3) whether notice was given; (4) whether claimant made timely written claim; and (5) other defenses. The issue raised by this appeal is whether claimant needs the treatment Dr. Tejano recommends. This issue is not, in our view, jurisdictional and is not subject to review on appeal from a preliminary hearing order.

But the current appeal is not from a preliminary hearing held before the award. Nevertheless, the Board believes this Order should be treated as a preliminary hearing order. The hearing was held pursuant to an Application for Preliminary Hearing. The ALJ treated the hearing as a preliminary hearing. Medical evidence was introduced without a deposition as it can only be in a preliminary hearing. As we read the statute, K.S.A. 44-534a, nothing in the language of the statute precludes use of preliminary hearing procedures for post-award medical or temporary total disability benefits. The preliminary hearing is designed to allow an expedited procedure to determine the right to benefits which may be needed immediately. Delay can cause substantial hardship or, in some cases, even irreparable harm. The expedited procedure can be as important post-award as pre-award. For these reasons, the Board concludes the hearing in this case should be treated as a preliminary hearing.

The preliminary hearing may be made a final order by setting terminal dates and allowing the parties the opportunity to introduce other evidence, including the opportunity to depose the medical witnesses. In the alternative, the parties may stipulate to use of the medical reports without deposition and agree that no further evidence is to be offered.

Because the Order appealed here was a preliminary hearing order and because the appeal does not raise a jurisdictional issue, the appeal must be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the Order entered by Administrative Law Judge Bruce E. Moore on June 10, 1999, should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

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BOARD MEMBER

c: M. John Carpenter, Great Bend, KS  
Jerry M. Ward, Great Bend, KS  
Richard L. Friedeman, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director